

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MENTAL HYGIENE LEGAL SERVICE,

Plaintiff,

-and-

SHAWN SHORT,

Plaintiff-Intervenor,

-against-

STATEMENT

Docket Number
07-CV-2935 (GEL)
(THK)

ELIOT SPITZER, in his official capacity as Governor of the State of New York, ANDREW CUOMO, in his official capacity as Attorney General of the State of New York, MICHAEL HOGAN, in his official capacity as Commissioner of the New York state Office of Mental Health, DIANA JONES RITTER, in her official capacity as Commissioner of the New York State Office of Mental Retardation and Developmental Disabilities, and BRIAN FISCHER, in his official capacity as Commissioner of the New York State Department of Correctional Services,

Defendants.

HOLLIE S. LEVINE states under penalty of perjury that the following is true and correct:

1. I am an Associate Attorney with the Mental Hygiene Legal Service, Third Judicial Department, Sheila E. Shea, Director, counsel for Plaintiff-Intervenor.
2. I make this statement in opposition to Defendant's motion to dismiss the complaint of Plaintiff-Intervenor.
3. Following the issuance of this Court's November 16, 2007 Opinion and Order,

Justice Garry issued an order dated November 21, 2007 releasing the Intervenor from secure confinement pending trial, pursuant to conditions set by the Court. See Exhibit 1, annexed hereto.

4. A telephone conference was held with the Court, Assistant Attorney General Geoffrey Rossi and myself on the afternoon of November 26, 2007.
5. Assistant Attorney General Rossi informed the Court and counsel at that time that it was the position of the defendants that the Court did not have the authority to order supervision of Shawn Short by the New York State Division of Parole. The Court requested that Assistant Attorney General Rossi prepare his argument in the form of an order to show cause to be made returnable on December 6, 2007.
6. The Attorney General of the State of New York thereafter commenced a motion to vacate Justice Garry's November 21, 2007 release order and return the Intervenor to secure confinement. The State maintained, among other things, that the New York State Division of Parole could not be ordered to exercise supervision of the Intervenor pending trial, and that absent such supervision, the State has no adequate and less restrictive alternative other than to maintain the Intervenor in secure confinement pending trial. The Court signed the Order to Show cause based on the petition of AAG Rossi. See Exhibit 2, annexed hereto.
7. Federal Plaintiff-Intervenor (respondent in the State proceeding) filed a response on December 5, 2007. See Exhibit 3, annexed hereto.
8. The court heard oral argument on the State's petition on December 6, 2007. Justice Garry denied this relief on December 6, 2007, stating from the bench that the relief sought by the Attorney General's Office would serve to "eviscerate" the

preliminary injunctive relief granted the Intervenor by this Court's November 16, 2007 Opinion and Order. It is expected that Justice Garry will sign an order formally denying the State's motion to return the Intervenor to secure confinement within the next few days.

Dated: Binghamton, New York
December 10, 2007

SHEILA E. SHEA, ESQ. DIRECTOR
Mental Hygiene Legal Service
Third Judicial Department
Attorneys for Shawn Short

s/

By:
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